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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

18 On July 25, 2008, the Ninth Circuit issued its decision in Prieto-Romero v. Clark, -- F.3d --,  
19 2008 WL 2853396 (9th Cir. July 25, 2008), holding that Zadvydas<sup>1/</sup> and Nadarajah<sup>2/</sup> do not apply  
20 where the only obstacle to removal is a pending petition for review. Id. at \*7 (“Although his removal  
21 has certainly been delayed by his pursuit of judicial review of his administratively final removal  
22 order, he is not stuck in a “removable-but-unremovable limbo,” as the petitioners in *Zadvydas*  
23 were”). See also Casas-Castrillon v. D.H.S., -- F.3d --, 2008 WL 2902026 at \*5 (9th Cir. July 25,  
24 2008) (“Although Casas’ nearly seven-year detention certainly qualifies as prolonged by any  
25 measure, we hold that the government retains authority to detain him under § 1226(a) because Casas

<sup>27</sup> 1/ *Zadvydas v. Davis*, 533 U.S. 678 (2001).

<sup>28</sup> 2/ Nadarajah v. Gonzales, 443 F.3d 1069 (9th Cir. 2006).

1 faces a significant likelihood of removal to Colombia once his judicial and administrative review  
2 process is complete").

3 In addition, the Ninth Circuit held in Prieto that, because Prieto had already been provided  
4 with ordinary bond review by an Immigration Judge ("IJ"), he was not entitled to a so-called Tijani  
5 bond hearing (in which the burden of persuasion lies with the Government to prove flight risk and/or  
6 danger to the community). See Prieto at \*10 (citing Tijani v. Willis, 430 F.3d 1241 (9th Cir. 2005)).  
7 As explained in the Government's Return, at a September 7, 2006 bond hearing, the IJ lowered  
8 Mbodji's \$10,000 bond to \$7500, and Mbodji waived further appeal to the Board of Immigration  
9 Appeals ("BIA"). [Ex. 22.]

10 Therefore, since it appears that Mbodji's Petition may have been rendered moot by the Prieto  
11 and Casas decisions, the Government proposes that the Court order Mbodji to show cause why the  
12 instant Petition should not be dismissed or that the Court otherwise order supplemental briefing.

13 DATED: August 13, 2008

14 Respectfully submitted,

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